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## European Union

### Trade Policy Monitoring

## Austria's Request for Ban on Use of GMOs Denied 2003

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**Report Highlights:**

The EU Commission rejected Austria's request for a temporary ban on the planting of genetically modified plants in the region of Upper Austria. The Commission ruled that Austria failed to provide sufficient scientific evidence to justify a ban.

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Includes PSD Changes: No  
Includes Trade Matrix: No  
Unscheduled Report  
Brussels USEU [BE2]  
[E2]

In March 2003, Austria requested that the EU Commission authorize a temporary ban on the planting of genetically modified (GM) plants in the region of Upper Austria. The purpose of the ban was to isolate conventional and organic crops from contact with GM plants as well as plant and genetic resources from hybridization with GMOs. On September 2, the Commission ruled that Austria failed to present sufficient scientific evidence to warrant such a ban and denied the request.

Austria has been a vocal critic of GMOs and has called on the Commission to develop EU-wide guidelines on the coexistence of GM crops with conventional and organic agricultural production systems. Thus far the Commission has encouraged the member states to develop their own guidelines, short of instituting blanket bans on the planting of approved GM crops. Despite the drafting of new EU legislation (see reports below) intended to restart the approval process for GMOs, Austria's stance regarding coexistence could signal the opening of a new front to delay the approval process.

Predictably Austrian reaction to the Commission's decision was negative. Agriculture and Environment Minister Josef Proell characterized the Commission's decision as "incomprehensible", and added that the preconditions to lift the EU moratorium on the approval of new GMO seeds were still not met. He also criticized the failure to introduce community-wide rules for coexistence while blocking national measures.

#### Related reports from USEU Brussels:

Report Number	Title	Date Released
E23160	US Requests WTO Panel on Biotech Crops	8/19/03
E23125	EP Second Reading of GMO Legislation	7/07/03
E23081	Update on EU Legislation for GMO Approvals	5/23/03

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Full text of the Commission Press Release concerning Austria's Request for a Ban follows below

DN: [IP/03/1194](#)    Date: 02/09/2003

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**IP/03/1194**

Brussels, 2 September 2003

## Commission rejects request to establish a temporary ban on the use of GMOs in Upper Austria

*The European Commission has decided to reject a request from Austria to introduce national measures banning the use of GMOs in the region of Upper Austria for a three-year period. The request was notified in March 2003, under Article 95(5) of the EC Treaty. This Article allows Member States to derogate from European Union harmonisation measures, under certain strict conditions. These include the emergence of new scientific evidence as well as the existence of particular country-specific conditions. After thorough examination of the Austrian request, the Commission concluded today that these conditions were not met in this specific case.*

#### **The Austrian measure**

The measures envisaged by the Upper Austrian regional Government are presented as a mean to protect organic and traditional agricultural production as well as plant and animal genetic resources from hybridisation with GMOs. The Upper Austria authorities consider that a general ban on genetically engineered seeds is justified given that the issue of coexistence between GM and non-GM method of agricultural production is not fully resolved.

#### **The Commission's decision**

Before taking its decision the Commission consulted the scientific committee of the European Food Safety Authority (EFSA). In the light of EFSA's assessment, the Commission has concluded that the information provided by the Austrian authorities does not constitute new scientific evidence relating to the protection of the environment or the working environment. Furthermore, Austria has not proven the existence of a problem specific to the Region of Upper Austria and which would have arisen after adoption of the harmonisation measure<sup>(1)</sup>. On this basis, the Commission has come to the conclusion that the draft Act does not meet the requirements of Article 95(5) of the Treaty and consequently derogation to EU legislation is not founded.

Environment Commissioner Margot Wallström said: "We have analysed the Austrian measures in great detail, and, legally speaking, this seems a clear-cut case. The Treaty requirements allowing for a derogation from EU legislation are not met and, in its role of guardian of the Treaty, the Commission can only reject

the Austrian request. I have, of course, full respect for the concerns of the Austrian authorities for the protection of the environment and human health, and have no problem to recognise that co-existence is an important issue to be addressed. However, I would like to point out that these are common concerns, shared by many regions across Europe, for which it is possible to find a viable response within the existing legal framework".

## **Background**

### **The Austrian notification**

On 13 March 2003 the Republic of Austria notified, in compliance with Article 95(5) of the EC Treaty, draft regional provisions concerning the 'Upper Austrian Act on the prohibition of genetic engineering 2002'. The measures are supported by a study that showed alleged new scientific evidence highlighting potential risks related to GMOs and specific to Upper Austria. Upper Austria therefore considers that a general ban on all GMOs (approved or not) is required in order to protect the environment and agriculture.

Such a prohibition derogates from the relevant Community harmonisation measure, in this case Directive 2001/18/EC, which foresees case by case assessment of GMOs, and enables Member States to invoke safeguard clauses only relative to specific GMOs that have already been approved in the EU. Upper Austria considers that such derogation is justified on the basis of Article 95(5) of the Treaty.

### **Article 95(5) of the Treaty**

Article 95(5) of the EC Treaty provides that *'if, after the adoption by the Council or by the Commission of a harmonisation measure, a Member State deems it necessary to introduce national provisions based on new scientific evidence relating to the protection of the environment or the working environment on grounds of a problem specific to that Member state arising after the adoption of the harmonisation measure, it shall notify the Commission of the envisaged provisions as well as the grounds for introducing them'*.

Furthermore, according to Article 95(6) of the Treaty, *'the Commission shall, within six months of the notification approve or reject the national provisions*

*involved after having verified whether or not they are a means of arbitrary discrimination or a disguised restriction to trade between Member States and whether or not they shall constitute an obstacle to the functioning of the internal market'.*

### **Assessment of the Austrian notification**

The Commission services conducted assessment of the draft Act in line with the requirements of Article 95(5). All the conditions in this article must be satisfied if the national derogating provisions are to be accepted by the Commission.

The European Food Safety Authority was consulted for scientific opinion as to whether the information provided by the Austrian authorities for the draft Act constituted new scientific evidence relating to the protection of the environment or the working environment as required by Article 95(5). Its opinion<sup>(2)</sup>, issued on 11 July 2003, concluded that;

- *The scientific information presented in the report provided no new data that would invalidate the provisions for the environmental risk assessment established under Directive 90/220/EEC or Directive 2001/18/EC;*
- *The scientific information presented in the report provided no new scientific evidence, in terms of risk to human health and the environment, that would justify a general prohibition of cultivation of genetically modified seeds and propagating material, the use of transgenic animals for breeding purposes and the release of transgenic animals, authorised for these purposes under Directive 90/220/EEC or Directive 2001/18/EC in this region of Austria.*

### **Co-existence**

The issue of co-existence of GM crops with conventional and organic farming was addressed by the Commission in a Recommendation on 23 July 2003. On GM-free zones, the Recommendation states that priority should be given to management measures applicable on farm level and in close co-operation with neighbouring farms depending on crop and product type (e.g. seed versus crop production). Measures of a regional dimension could be considered if they are proportioned and if sufficient levels of purity cannot be achieved by other means.

A clause on co-existence will be included into Directive 2001/18 saying that Member states may take appropriate measures to avoid the unintended presence of GMOs in other products.

[\(1\)](#)The 'harmonisation measure' is in this case Directive 2001/18/EC on the deliberate release into the environment of genetically modified organisms (OJ L 106, 17.4.2001, p. 1-39)

[\(2\)](#)Opinion of the Scientific Panel on Genetically Modified Organisms on a question from the Commission related to the Austrian notification of national legislation governing GMOs under Article 95(5) of the Treaty, The EFSA Journal (2003) 1, 1-5